



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA717]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northeast Fisheries Science Center Fisheries and Ecosystem Research, Atlantic Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Northeast Fisheries Science Center (NEFSC) for regulations and associated Letter of Authorization (LOA) to take small numbers of marine mammals incidental to fishery and ecosystem research in the Atlantic Ocean over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the NEFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the NEFSC's application and request.

DATES: Comments and information must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Electronic comments should be sent to ITP.Daly@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the NEFSC's application may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where

relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On September 2, 2020, NMFS received application from the NEFSC requesting authorization to take marine mammals incidental to fisheries and ecosystem research in the Atlantic Ocean. The NEFSC submitted revised applications on November 19, 2020, and December 3, 2020. We determined the application was adequate and complete on December 9, 2020. The requested regulations and LOA would be valid for five years, from September 10, 2021 through September 9, 2026.

The NEFSC plans to conduct fisheries and ecosystem research surveys in the Atlantic Ocean from Greenland to Florida with the majority of research occurring in the Northern Living Marine Ecosystem (NLME). It is possible that marine mammals may interact with fishing gear (*e.g.*, trawl nets, longlines) used in NEFSC’s research, resulting in serious injury or mortality. In addition, the NEFSC operates active acoustic devices

that have the potential to disturb marine mammals (Level B harassment). Because the specified activities have the potential to take marine mammals present within the Atlantic Ocean, NEFSC requests regulations and a LOA authorizing take by mortality, serious injury, and Level B harassment.

The requested incidental take regulations and LOA would be the second issued to NEFSC, following regulations and a LOA valid from 2016-2021. To date, NEFSC has complied with all requirements of the previously issued LOA (effective September 10, 2016 through September 9, 2021) and has not exceeded the authorized take numbers.

Monitoring reports submitted by NEFSC are available online at:

www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-nefsc-fisheries-and-ecosystem-research.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. Federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The NEFSC is the research arm of NMFS in the Northeast Region. The NEFSC conducts research and provides scientific advice to manage fisheries and conserve protected

species in the Atlantic Ocean, primarily from Maine through North Carolina. However, some limited fisheries research is conducted in more southern estuaries and Atlantic Ocean. The NEFSC provides scientific information to support the North Atlantic and Mid-Atlantic Fishery Management Council and numerous other domestic and international fisheries management organizations.

The NEFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NEFSC scientists and their partners conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. The gear types used fall into several categories: trawl gear used at various levels in the water column, longlines with multiple hooks, gillnets, and other gear. Of research gear used by NEFSC, only trawl, hook and line gear (including longline gears), fyke nets, and gillnets are likely to interact with marine mammals resulting in serious injury or mortality. Fisheries and ecosystem surveys conducted by the NEFSC also use active acoustic devices which may result in Level B harassment of marine mammals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the NEFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the NEFSC, if appropriate.

Dated: December 18, 2020.

Donna Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.